

EXHIBIT 15

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PEOPLESFLO MANUFACTURING, INC.)	
)	
Plaintiff,)	
)	
vs.)	Case No. 20-cv-03642
)	
SUNDYNE, LLC, ACCUDYNE INDUSTRIES)	
LLC, DXP ENTERPRISES, INC.,)	Honorable Manish S. Shah and
PUMPWORKS, LLC,)	
)	Magistrate Judge Young B. Kim
Defendants.)	

DECLARATION OF GEORGE (SKIP) GIESSING

My name is George (“Skip”) Giessing and I submit this declaration in connection with PumpWorks LLC (“PumpWorks”) Response to PeopleFlo’s Motion for Summary Judgment and PumpWorks’ Cross Motion for Summary Judgment. If called upon to do so, I could competently and truthfully testify to the facts set forth herein. Unless stated otherwise, the following facts are based on my own personal knowledge.

1. I am over 21 years old, I am of sound mind, and I am fully competent to make this Declaration and to testify to the matters stated in this declaration. I affirm the facts in this Declaration are true and correct.

2. I am Vice President of the Rotating Equipment Division of DXP. I have held this, or a virtually identical, position since October 2008 when I joined DXP. Previously, I had owned my own pump distribution and service and repair company for 24 years. I have been involved in the distribution and sales of pumps and related equipment since 1979. I report to Todd Hamlin, senior Vice President of Sales, who has overall responsibility for sales activities.

26. PumpWorks LLC entered the Development and Supply Agreement of March 22, 2018 (the “DSA”) with PeopleFlo. PumpWorks Industrial, which made the PWA sealed pump, worked pursuant to the DSA on behalf of PumpWorks LLC to help develop and manufacture the PWA-SL, the magnetically driven ANSI dimensional pump that incorporated the MCU’s provided by PeopleFlo.

PUMPWORKS’ ORDERS AND PAYMENTS TO PEOPLEFLO

27. The DSA sets out a multi-phase process. Pre-Phase I begins upon signing of the agreement and during this phase, PeopleFlo agrees to “manufacture and supply” magnetic coupling units MCUs in accordance with the PeopleFlo patents and know how (the “Work”). PumpWorks agrees to supply raw impeller (the component with fan-like blades that creates suction and discharges fluid when rotated) castings, order, purchase “and stock MCUs at a minimum volume” specified in the DSA. PeopleFlo was to machine the raw impeller castings and install them into the MCUs.

28. The DSA required PumpWorks to order a minimum of 200 MCU’s during the development “pre-Phase I” in two 100 MCUs increments, the first upon full execution of the DSA and the second within 6 months later with 50% payment of the purchase price upon making the orders and the other 50% of the purchase price paid after PeopleFlo had completed the manufacture of the MCUs. See DSA §2.

29. PumpWorks was required to order another 200 MCUs during the second year of a two-year Phase I: Validation and Rollout process, with 25% payment of the purchase price upon making the orders and the other 75% of the purchase price paid after PeopleFlo had completed the manufacture of the MCUs. Id.

30. PumpWorks placed the two Pre-Phase I and Phase I orders for 400 MCUs, a for a total purchase price of \$1,293,000. Attached as Ex. C is a true and correct copy of a spreadsheet summarizing all known orders, invoices, payments and shipping records for the 400 MCUs PumpWorks ordered. Supporting documents are cited in the entries and all were made available by DXP and PumpWorks or by PeopleFlo during discovery.

31. PumpWorks submitted Purchase Order No. 4744 on April 4, 2018 for 100 Group 2, low torque MCUs and paid \$165,000 (50%) as specified in the DSA. PumpWorks submitted Purchase Order No. 5263 on July 6, 2018 for 100 Group 2 high torque MCUs and paid \$198,000 (50%) as specified in the DSA. Ex. C; Ex. D; Ex. E.

32. At PeopleFlo's request for assistance with its cash flow problems, on February 11, 2019 PumpWorks paid \$260,040 as an additional 40% prepayment raising the prepayments for all Pre-Phase 1 undelivered MCUs to 90%

33. PumpWorks submitted PO No. 7024 on May 22, 2019 (8 months before it was due) for 200 Group 1 (100 high and 100 low torque) MCUs and paid \$283,800 (50%) on May 24, 2019 (though the DSA only required a 25% payment). To assist PeopleFlo with its continuing cash flow problems, on August 20, 2019 PumpWorks paid \$227,040, increasing the prepayment for the third order of MCUs by an additional 40%, raising the prepayment amount to 90% of the order. Ex C; Ex. F.

34. The three purchase orders used place holder delivery dates which, in the industry, means that the person accepting the order should suggest a date by which the supplier can perform. PeopleFlo did not do so. Instead, PeopleFlo indicated they could manufacture and ship 5-6 MCUs a week, but they failed to consistently adhere to that schedule.

35. By mid-April 2020, PeopleFlo had only delivered 63 MCUs from the first order, 27 MCUs from the second order and 46 MCUs for the third order. Ex. C.

36. To date, PumpWorks has paid almost \$1,170,000 and PeopleFlo has only delivered 136 of the 400 MCUs that were ordered leaving a backlog of 264 undelivered MCUs. Ex. C.

37. All information used to calculate the amount of money PeopleFlo owes PumpWorks is identified in Ex. C. The initial chart up through December 2019 was prepared by Clark Shafer. Additions were made from records produced (identified by bates numbers). The calculations were performed as follows:

- 1) Add all amounts paid by PumpWorks to PeopleFlo on Purchase Orders Nos. 4744, 5263, and 7024. These total: \$1,168,972.40.³
- 2) Calculate the total value of the pumps PeopleFlo delivered to PumpWorks on the Purchase Orders. (This was done by counting the number of pumps PeopleFlo delivered on each Purchase Order and multiplying that number by the price per unit for the Order.)

For Purchase Order No. 4744 PumpWorks received 63 pumps priced at \$3,300 each, for a total value of \$207,900.⁴

For Purchase Order No. 5263 PumpWorks received 27 pumps priced at \$3,960 each, for a total value of \$106,920.

And for Purchase Order No. 7024 PumpWorks received 22 pumps priced at \$2,706 each and 24 pumps priced at \$2,970 each, for a total value of \$130,812.

The total value of the delivered pumps is \$445,632.

- 3) Determine the amount of adjustments for valid unpaid invoices submitted by PeopleFlo.

³ This is not the total amount of money PumpWorks paid PeopleFlo. PumpWorks placed several small orders which it fully paid. Since adding these orders to both sides of the equation would not change the total amount owed, they were not included in the calculations.

⁴ PeopleFlo also shipped a 3x4x7 low torque MCU which PumpWorks did not order valued at \$3,300.00 which is added to the misc. invoices.

PumpWorks placed three additional small orders (Purchase Orders Nos. 7739, 7740, and 7896) for miscellaneous items which it received and the unordered MCU that PeopleFlo shipped. The balance owed on these miscellaneous orders is \$33,136.50.

- 4) Calculate the value of goods delivered by PeopleFlo
 $\$445,632.00 + \$33,136.50 = \$478,768.50$
- 5) Calculate the value of advances retained by PeopleFlo
 $\$1,168,972.40 - \$478,768.50 = \$690,203.90$

PRE-PHASE I: DEVELOPMENT ACTIVITIES

38. After the DSA was executed, I was designated product line manager. As product line manager, I generally took direction from Trey Maxwell as to when, and to some degree what, activities should be undertaken with respect to the PWA-SL product. In general, I made continuous efforts to help PumpWorks develop the PWA-SL product, and to promote the product and to interface with PeopleFlo. I monitored and sought to expedite the progress of the development of the PWA-SL product line and testing of the pumps. I played a somewhat similar role in the development of PumpWorks earlier product, the PWA sealed pump.

39. I communicated with DXP Regional Vice Presidents, even those such as Mark Smith, Jim Hook and Marc Sanchez who did not believe there was a wide market for the product and who expressed their beliefs that the proposed pump would compete with their Sundyne product offerings. I knew the market even outside of Sundyne territories would be large and, in my opinion, if the PWA-SL product proved to have all of the performance features promised by PeopleFlo and could be offered at a very low price point as PeopleFlo's presentations claimed, (see paragraph No. 19, above) it might have been possible over time to convince other OEMs, including Sundyne, that the PWA-SL was not a competitive product. Even if I could not convince all of DXP regions to take up the PWA-SL, I knew that PumpWorks already had a